

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Norfolk Division

UNITED STATES OF AMERICA)	CRIMINAL NO. 2:05cr
)	
)	18 U.S.C. §§ 1341 and 2
v.)	Mail Fraud
)	(Count 1)
)	
C. WAYNE BERRY)	18 U.S.C. §§ 981(a)(1)(C)
)	Criminal Forfeiture

CRIMINAL INFORMATION

COUNT ONE

THE UNITED STATES ATTORNEY CHARGES THAT:

From in or about November 1996 through April 2005, the exact dates being unknown, in the Eastern District of Virginia and elsewhere, defendant C. WAYNE BERRY knowingly devised and intended to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, which scheme and artifice, and the execution thereof, operated in substance as follows:

1. The object of the fraudulent scheme and artifice devised by C. WAYNE BERRY was to embezzle monies placed with him for investment by clients and customers seeking various financial services and insurance products.

2. As part of the scheme and artifice, C. WAYNE BERRY, a licensed insurance agent, owned and operated C. Wayne Berry and Associates in Portsmouth, VA. This business provided various financial services to hundreds of clients and specialized in the promotion of insurance products to its clients.

3. As part of the scheme and artifice, C. WAYNE BERRY advertised his business and conducted financial seminars designed to attract senior citizens as new clients. In advertisements and in client correspondence, C. WAYNE BERRY described himself and his associates as the "Safe Money Guys" and his business as the "Safe Money Group" beginning in

or about 2002. At free seminars offered at local meeting places and restaurants in conjunction with a free lunch or dinner, C. WAYNE BERRY made presentations to prospective clients about his firm's services and about the safety and benefits of investing in annuities.

4. As part of the scheme and artifice, after conducting seminars C. WAYNE BERRY marketed and caused his staff to continue to market his services to close the deal with interested, prospective clients.

5. As part of the scheme and artifice and under the guise of providing financial counseling, C. WAYNE BERRY met with new clients, completed account applications, and accepted monies from those clients to fund the agreed upon financial products. Rather than properly directing clients to make and to obtain checks payable to the financial service provider, however, C. WAYNE BERRY accepted: (a) client checks made payable to himself and his business; (b) blank checks which he made payable to himself; and (c) cash payments. After receiving these funds, C. WAYNE BERRY deposited them into business and personal bank accounts and fraudulently failed to invest some or all of the funds entrusted to him. Instead, C. WAYNE BERRY stole the funds and used them for his own and his family's benefit and to fund the operation of his business.

6. As part of the scheme and artifice and to prevent its discovery, C. WAYNE BERRY mailed completed annuity applications to an insurance company with notations that the monies needed to purchase the annuity would be sent in soon after the liquidation of other investment accounts. Later, C. WAYNE BERRY would sometimes send in a portion of the funds (for example, \$10,000 out of \$100,000 received) to the insurance company to open an annuity contract.

7. As part of the scheme and artifice and to prevent its discovery, C. WAYNE BERRY provided false and fraudulent information to clients about their purported investments. For example, C. WAYNE BERRY would inform clients seeking account documentation, that the

insurance company would only send them an account statement upon its one-year anniversary.

C. WAYNE BERRY also mailed and supplied to clients on his firm's letterhead fictitious account statements showing that their funds were invested and earning substantial returns, when, in fact, C. WAYNE BERRY knew that he had stolen his client's monies and was using them to pay for, among other things personal and business expenses.

8. To perpetuate the scheme and artifice when he feared it had been or was about to be discovered, C. WAYNE BERRY continued to solicit new clients and to obtain monies from them. Rather than investing the monies as promised, however, C. WAYNE BERRY began using the monies stolen from new victims to re-pay earlier victims of his fraud. For example, in November 2004, C. WAYNE BERRY obtained over \$567,000 for investment from a ninety-five year old, former neighbor who wanted to use the monies to provide for his eighty-seven year old spouse. Although BERRY promised to safely invest these funds to protect the principal and to provide a good income, he then used the funds to make repayments to earlier victims, many of whom were from Berry's social and church circles. To allay the suspicions of these earlier victims, BERRY repaid them both the principal sum invested and a significant return, to make it appear as if their monies had been properly handled, when, in fact, they had been stolen and spent by BERRY.

9. On or about September 11, 2004, in the Eastern District of Virginia, for the purpose of executing his scheme and artifice to defraud, C. WAYNE BERRY mailed and caused to be placed in an authorized depository for mail matter for delivery by the United States Postal Service an envelope containing certain documents, that is: a false September 11, 2004 portfolio statement addressed to William and Patricia Morgan in Portsmouth, VA, showing that the \$434,475.26 provided by the Morgans to BERRY was fully invested in annuity contracts currently valued at \$481,903.54, resulting in a year-to-date gain of \$47,428.28, when, in fact,

BERRY then and there well knew that he had invested only \$234,475.26 of the Morgans' monies and had stolen the remaining \$200,000.

(In violation of Title 18, United States Code, Sections 1341 and 2).

FORFEITURE

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

1. The defendant, C. WAYNE BERRY, if convicted of the violation alleged in count one of this criminal information, as part of the sentencing pursuant to Fed. R. Crim. P. 32.2, shall forfeit to the United States:

a. Any property, real or personal, which constitutes or is derived from proceeds traceable to a violation under 18 U.S.C. § 981(a)(1)(C);

b. Any other property of the defendant's up to the value of the property subject to forfeiture above, if any property subject to forfeiture above, (a) cannot be located upon the exercise of due diligence, (b) has been transferred to, sold to, or deposited with a third person, (c) has been placed beyond the jurisdiction of the Court, (d) has been substantially diminished in value, or (e) has been commingled with other property that cannot be subdivided without difficulty.

2. The property subject to forfeiture under paragraph 1 includes, but is not limited to the following property:

A monetary judgment amount of at least \$2,200,644 in United States currency and all interest traceable thereto, all of which represents proceeds from the offense charged in Count One;
\$53,980.00 in United States Currency seized on April 27, 2005;
\$23,500.00 in United States Currency seized on April 27, 2005;
\$31,000.00 in United States Currency seized on May 11, 2005;
\$37,000.00 in United States Currency seized on May 11, 2005;
\$31,686.59 in United States Currency seized on June 15, 2005;
Assorted items of jewelry, valued at \$3,029.00, seized on June 17, 2005;
2005 Honda CRV, VIN #SHSRD78895U308395;

\$1,118.12 in United States Currency seized on June 17, 2005; and
\$4,192.45 in United States Currency seized on November 7, 2005.

(All in violation of Title 18, United States Code, Section 981; Title 21, United States Code, Section 853(p), and Title 28, United States Code, Section 2461(c)).

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